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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,060	07/06/2000	KAZUAKI OHKUBO	YAO-4321US	7496

7590 05/22/2003  
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EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 05/22/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

# Office Action Summary

Application No.

69/530060

Applicant(s)

Shubert

Examiner

J. Styer

Group Art Unit

3729

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE —3— MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on March 11, 2003.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1, 3, 4, 11, 19, 20, 32, 33, 35-37, 39-40, 42-44 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 3, 4, 11, 19, 20, 32, 33, 35-37, 39-40, 42-44 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3, 4, 17, 19, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 4 are indefinite as it is unclear what further structure is recited. Claims 17 does not further limit claim 1 as the radiation in the range 600-1100 nm already recited in claim 1 fulfills the recitation in claim 17, further recitation of this range a second time does not remedy this indefiniteness. Claims 19 and 20 are still substantial duplicate of claim 4. It is noted that even if claims 19 and 20 were crafted to read over claim 4 via amendment of a claim from which they commonly depend, they would still be substantial duplicates of each other, as applicant has provided no disclosure drawn to separate parameters for providing the functions.

Claims 1, 3, 4, 17, 19, 20, 32, 33, 35-37, 39, 52-58 and 68-70 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Diamantopoulos et al.

See column 6, line 1 to column 10, line 62, especially column 8, lines 54-59.

Claims 1, 3, 4, 17, 19, 20, 32, 33, 36, 37, 39-56, 58, 59 and 61-65, 67, 68, 70 and 72-74 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hughes.

See column 3 lines 5 - column 4, line 45, and figures 1. The device displays an image of the light source.

Claims 1, 17, 57, 60, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes in combination with Diamantopoulos et al. Hughes teaches a device as claimed but does not specifically discuss pulse modulating the radiation. Diamantopoulos et al teach the

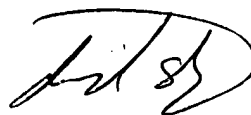
Art Unit: 3739

equivalence of continuous wave and pulse modulated light for providing a therapeutic effect with light. It would have been obvious to the artisan of ordinary skill to modulate the light produced by the device of Hughes, since this is equivalent to continuous light for providing therapy, as taught by Diamantopoulos et al, thus producing a device such as claimed.

Diamantopoulos et al teach the application of wavelengths above 1100 nm. See for example Table 1 thereof.

Applicant's arguments with respect to claims 40-51, 57, 59-67, and 72-74 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.



DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330

Shay/DI

May 19, 2003